ZipDX®

November 26, 2010

Via ECFS

Zac Katz
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: WC Docket 07-135, *Establishing Just and Reasonable Rates for Local Exchange Carriers*

Dear Mr. Katz:

I feel compelled to write to address recent comments in this proceeding, to highlight the following regarding Access Stimulation:

1) Parties are, of course, offering anecdotes and "solutions" that suit their particular interests. The FCC must step back, make an objective assessment of how the "access game" is to be played, and view the inputs in that context.
2) The FCC must clarify the ground rules for assessing and collecting access charges. In the context of conferencing services (and other services involved in access stimulation), today's implementation has devolved into something completely dysfunctional.
3) The Commission must uphold its duty to the industry by acting swiftly to address these issues. The Chairman's office should promptly direct the issuance of an Order.

ZipDX BACKGROUND

ZipDX is a start-up provider of innovative audio conferencing (and other) services. Today, we operate without benefit of access charge revenue; beneficiaries of our services pay us directly for their usage. We had understood that funding our business via access charges was "on the edge of legitimacy" and have refrained from adopting that model. However, we are fully prepared to reverse that position if the FCC indicates otherwise, either explicitly through an Order or through continued inaction.

ENTITLEMENT?

Historically, terminating switched access fees paid to a LEC were intended as a partial offset for the Central Office switching and transport costs associated with serving retail customers. Differential access charges (that is, higher rates in rural areas versus urban environments) reflected the higher service costs associated with lower subscriber counts and lower aggregate traffic volumes.

Today, an ILEC in a suburban setting will have a terminating Central Office switched access rate of about $0.002 per minute of use. A Central Office might serve 20,000 lines, each generating 500 MOU's per month, for a total of 10 million MOUs and $20,000 in access revenue.

In Tekstar's Nov. 18, 2010 filing in this docket, it asserted that it is "entitled" to a terminating switched access rate of approximately $0.043 per MOU for its "high traffic volume" service (consisting of, for example, connections to "free" conferencing calling platforms).

In contrast to our ILEC example, such service requires a trivial Central Office "switch" because the calls aren't being distributed to thousands of customers. Easily, 5,000 simultaneous calls can be transported over a single Ethernet cable, stretched 50 feet across a central office to a conference bridge. Those 5,000 channels could support 25 million minutes of conferencing each month.

As an alternative to the $0.043 rate, Tekstar proposes an access charge step-down schedule applicable to each IXC delivering calls. Assume three IXC's; two deliver 10 million MOU each, and a third delivers 5 million. According to its schedule, Tekstar suggests it should collect a total of $462,500/month for those minutes.

If we've done our math correctly, Tekstar's schedule indicates it is "entitled" to 23 times the compensation available for the entire ILEC Central Office examined above, even though it is doing essential zero "switching" and is delivering the calls not to thousands of customers but to a rack of equipment across the room.

Tekstar references "NECA Band 8" in its letter as the benchmark rate to which it is "entitled." NECA, in its Dec. 17, 2007 filing in this docket, estimates in Exhibit 2 on Page 7 that if it DID have a member carrier operating a Central Office with 2,000 lines and 10,000 MOU per line per month (for a total of 20 million MOU per month), access charges would be under $0.005 per MOU.

Tekstar uses the term "entitled" five times in its letter. The FCC needs to make clear if this application of access charges is, in fact, an entitlement. If so, it needs to further clarify the rate at which the entitlement can be collected. Why, as a prudent business, would Tekstar volunteer to reduce its monthly collections to $462,500 when it is entitled to $1,075,000? Even to Tekstar, it seems the "entitlement" isn't obvious. Maybe they think collecting 50X too much is being greedy and 23X is okay.

PUBLIC BENEFIT?

Some commenters in this proceeding have indicated that there is a public benefit to the status quo. "Free" conferencing, they say, benefits religious organizations, Native Americans, political parties, and other deserving organizations.

However, other conferencing providers address the same issues with a lower cost to the subscriber. For instance, Generic Conferencing (www.genericconf.com) provides audio conferencing services to many religious congregations in small towns in the US. These services are typically used to transmit Bible study classes to elderly congregation members who are now homebound or hospitalized. Each subscribing congregation pays a flat monthly rate of between $18 and $25 per month. Each congregation typically hosts 8 to 10 two hour meetings per month, each with up to 20 participants. Generic Conferencing has over 9,000 such subscribers in the US, and these subscribers use over 35 million conferencing minutes each month.

Generic Conferencing provides these services by using local access numbers and VoIP technology. So instead of requiring the conference listeners to make a long distance call, callers make a local call. If these same subscribers were using a "free" conferencing service, the callers would either pay per minute to access the conference bridge, or use an "unlimited" long-distance service (possibly with an additional monthly fee). The cost per caller in that scenario is much higher than the cost per caller using Generic Conferencing services, and a large share of cost burden would fall on the long distance company of each subscriber.

Instead, Generic Conferencing's business model does not shift the cost burden to the IXC, but the true cost of service is borne by the conference beneficiaries. This is a more sustainable and cost-effective way to deliver conferencing service. The real cost is considerably less than the access-charge model offered by Tekstar.

FreeConferenceCall.com contends that there is a public benefit in using access charges (at some stipulated rate) to fund the delivery of "enhanced services." This rate, which is demonstrably higher than the rate at which the call could be completed if it were NOT a "high volume access service," is not borne by the "cost causer" (and service beneficiary) because it cannot be passed back by the IXC. And it is difficult to see how this would be a sustainable model in the face of ICC reform, which long-term, most experts agree, will drive access charges to a much lower uniform flat rate (or zero).

"Free conferencing" is by no means "free." When forced to pay these inflated access charges, the IXCs distribute to ALL of their customers the higher costs, whether they make use of the "free services" or not. That means that organizations like Generic Conferencing and ZipDX, as well as the rest of the IXC customer universe, eat those charges. Thus, the "paid" conferencers are subsidizing the "free" conferencers. If this is in fact an entitlement, then ZipDX needs to get on the other side of the equation.

RULE CONFLICTS BETWEEN ACCESS CHARGES & USF

"Free" conferencing services are adversely affecting the Federal Universal Service Fund. In 2008, the FCC's "InterCall Order" mandated that "audio bridging providers" file and pay into the FUSF. The intent of that Order was to assess FUSF on the bridging "value added" (any long-distance element associated with the service). This brought a bevy of murky issues into play, including questions of jurisdiction (when is a conference call inter-state vs. intra-state; when is it an information service vs. a telecommunications service, etc.).

Of course "free" conferencing services currently escape FUSF, since the fee is not assessed on access charges. Thus, the InterCall Order, with the objective of "leveling the playing field" between "integrated" and "stand-alone" bridging providers, has in fact now "tilted" the field with respect to "paid" and "free" providers.

The more convoluted the rules get, the more anomalies (and arbitrage opportunities) pop up. We know the FCC's ultimate intent is to re-tool both the FUSF and ICC regimes. Incremental steps must be taken now to preserve a rational economic market for conference call services. Those of us that try to comply with the rules cannot wait for broader relief.

CONCLUSION

Arbitrage of access charges has been a festering problem for years and the FCC has an obligation to address it. Do NOT use the excuse, "It's gone on for years; what's one more?" You should be ashamed of your failure to this point. You have an obligation to those of us that live and die by your rules to promptly issue an ORDER clarifying, at least for the highest-dollar, highest-volume applications, how these charges should be applied.

Resolving this will be a first step towards overall rationalization of access charges.

Regards,

David Frankel, CEO
ZipDX LLC
Los Gatos, CA
+1-800-372-6535; dfrankel@zipdx.com